

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2669/97

New Delhi this the 8th Day of January 1999

Hon'ble Mr. R.K. Ahooja, Member (A)

Shri D.K Mohaptra, IPS
S/o Late Braja Mohan Mohapatra,
R/o Bungalow C-2,
Karbala Lane,
New Delhi-110 003.

Applicant

(By Advocate: Shri Jayant Dass, Sr. Counsel
with Shri Ajit Pudussery)

-Versus-

1. Union of India
Through the Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhawan,
Sardarjung Airport,
New Delhi.

2. Union of India
Through the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

3. Airports Authority of India,
Through its Chairman,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi.

Respondents

(By Advocate: Shri VSR Krishna for Respondent
Nos. 1 & 2
Shri V.K. Rao, for Respondent No. 3)

O R D E R

Hon'ble Shri R.K. Ahooja, Member (A)

The Applicant is an Indian Police Officer (IPS) of 1965 Batch belonging to the Orissa Cadre. He joined, on deputation, as Chief Vigilance officer of a Public Sector Undertaking, the Airports Authority of India w.e.f. 4.12.1992. His terms of deputation were settled by the Govt. of India, Ministry of Civil Aviation & Tourism vide letter dated 27.5.1993, a copy of which has been annexed to the O.A. The applicant states that his

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parent department i.e., State Government vide its O.M. No. CS-II/36/94-21666 dated 14.6.1994 has allowed to the State govt. employees, as well as All India Services Officers, encashment of 30 days earned leave in a block of 24 months subject to certain conditions. A similar facility has been allowed by the Airports Authority of India vide its Personnel Circular No. 11/96 dated 1.10.1996 for encashment of earned leave by its employees once in a financial year subject to the employee keeping residual leave of 30 days at the time of encashment in his credit. The applicant submits that as per the terms of deputation he is to be governed by the rules of the Airport Authority of India in regard to encashment of earned leave and accordingly he applied for and obtained 90 days leave encashment. However, by the impugned order dated 27.10.1997, Annexure I, Airports Authority of India asked him to refund the encashment amount as the Ministry of Civil Aviation had informed them that the benefit of encashment was not available to the applicant while on deputation to Airports Authority of India. Aggrieved by this Memorandum, the applicant has come before the Tribunal seeking a direction to quash the decision taken by the Ministry of Civil Aviation and Tourism.

2. I have heard the counsel for the applicant as well as the counsel for Respondent Nos. 1 & 2 viz., Ministry of Civil Aviation and Tourism and Respondent No. 3 Airport Authority of India.

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3. I shall first take up the reply of the last mentioned Respondent namely Airports Authority of India. Shri V.K. Rao, learned counsel on their behalf has urged before me that since the requisite notification under Section 14(2) of the Administrative Tribunals Act has not been issued extending the jurisdiction of the Tribunal to the Airports Authority of India, the present O.A. is not maintainable. This point has now been settled by the decision of the Full Bench of the Tribunal in a batch of O.As heard along with O.A. No. 493/97 (I was also a Member of that Full Bench). The Full Bench has held as follows:

"Section 14(3) again begins with a non obstante clause and lays down that once the authority, corporation, society or body is notified under Section 14(2) the Tribunal's jurisdiction would extend over it in regard to recruitment and matters connected therewith in regard to its affairs, as also all service matters concerning persons [other than those already referred to in Section 14(1)(a) and Section 14(1)(b)] appointed to services or posts in connection with the affairs of such an entity, and pertaining to the service of such person in connection with such affairs. The fact that this sub-section specifically excludes persons already referred to in section 14(1)(a) and Section 14(1)(b) strengthens our view that the CAT's jurisdiction does not cease in regard to service disputes of Central Government servants seconded to local or other authorities, within India or under Government of India's control, or to corporations, or societies owned or controlled by the Government arising out of the period of such secondment, even if that entity has not been notified under Section 14(2). It also needs to be stated that no exception to the above has been provided in the Act."

Thus the present O.A. is maintainable as the applicant belongs to an All India Service.

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4. The learned Sr. Counsel for the applicant Shri Jayant Dass sought to establish the case of the applicant on three grounds. Firstly, he pointed out that the applicant was entitled to the facilities of encashment of leave while posted in his own cadre of Orissa. Secondly, the terms of deputation vide letter dated 27.5.1993, para 14 provide that in all other matters not specified therein, the deputationist will be governed by the rules and conditions of the service of National Airports Authority (now Airports Authority of India); since there was no specific ^{written} permission regarding leave encashment in the aforementioned letter necessarily the facility available to the employees of Airports Authority of India regarding leave encashment would apply mutatis mutandis in the case of the applicant. Thirdly, Shri Jayant Dass contended, the post of Chief Vigilance Officer in the Airports Authority of India is not a post connected with the affairs of the Union and therefore the restrictions imposed by the Government quoted under All India Services (Leave) Rules are not applicable in his case.

5. Having gone through the relevant rules, I find that the case of the applicant cannot be supported. Firstly, the letter of 27.5.1993 on the subject of deputation terms has two provisions which place the matter beyond any doubt. These are reproduced below:

2. PAY:

"Under Rule 9 of the IPS (Pay) rules, 1954 the post of Chief Vigilance Officer, National Airports Authority will be equated to the post of Joint Director in the Central Bureau of Investigation in Schedule III, (C) to the IPS (Pay) Rules, 1954, in the scale of Rs.

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5900-6700. The pay of Shri Mohapatra will accordingly be fixed in the above scale of pay". (emphasis supplied).

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8. LEAVE AND LEAVE SALARY CONTRIBUTION ETC:

The deputationist will remain subject to the Leave Rules applicable to the I.P.S. - N.A.A. will pay to the Accountant General, Orissa leave salary and pension contribution according to the rates prescribed by the Government of India and as intimated by the A.G., Orissa. (emphasis supplied).

14. OTHER MATTERS:

In all other matters, not specified herein, the deputationist will be governed by the rules and conditions of the service of National Airports Authority.

6. As para 8 of the letter reproduced above clearly points out the applicant while on deputation would remain subject to the leave rules applicable to the IPS i.e., All India Services (Leave) Rules 1955. These Rules have no provision for encashment of leave except in the case of leave encashment at the time of retirement. The All India Services (Condition of Services - Residual Matters) Rules, 1960 provide that where there is no provision in the Rules then such matters shall be regulated in the case of persons serving in connection the the affairs of the Union, by the rules, regulations and orders applicable to officers of Central Services, Class I; and in the case of persons serving in connection with the affairs of a State by the rules, regulations and orders applicable to officers of the State Civil Services, Class I, subject to such exceptions and modification as the Central Government may, after consultation with the State Government concerned, by order in writing, makes. The Central Civil Services (Leave) Rules, 1972 also have no provision for encashment

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of leave except at the time of retirement. (Some modifications have since come on the basis of the recommendations of Fifth Pay Commission but these are not germane to the issues involved here).

7. It was urged on behalf of the applicant that when there is no specific provision regarding leave encashment in the All India Services Leave Rules or the Central Civil Services Leave Rules then the matter as regards the entitlement of the officer has to be decided with reference to the Rules pertaining to the employees of the Airports Authority of India. This argument cannot hold water. The terms of deputation provide that All India Services Leave Rules will apply in the case of the applicant. These Rules do not provide for encashment of leave. In other words, All India Services Officers are under these Rules not entitled to encashment of leave. The denial of the facility in the Leave Rules does not mean that the matter is not covered and hence is to be decided in terms of Para 13 of the deputation terms as one of the "other matters". The applicant is squarely covered by the All India Services Leave Rules, 1955 and the All India Services (Conditions of Service - Residual Matters) Rules, 1960. His case in respect of leave matters does not fall, therefore, under Para 13 of the deputation terms.

8. The point made by Shri Jayant Dass that the officer is not while on deputation to the Airports Authority of India, serving in connection with the affairs of the Union needs also to be dealt with. As pertinently pointed out by Shri VSR Krishna, learned

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counsel for the respondent Nos. 1 & 2, the applicant has been appointed to the Airports Authority of India by the Order of the President. Article 312 of the Constitution of India provides for the creation of one or more All India Services common to the Union and State and Indian Police Service is deemed to be one such Service. The members of the Indian Police Service are, therefore, to serve in respect of either the affairs of the Union or of the State. What is more para 2 of the terms of deputation quoted above, specifically state that he will be given the pay and allowances of a Joint Director of CBI, which is a post included in Schedule III of the IPS Pay Rules. In fact without this equation it would not have been possible to post the officer with the Airport Authority of India and to protect his pay and allowances and ^{status} that is as an IPS Officer.

9. I, therefore, conclude that the applicant is not entitled to obtain the benefit of encashment of Leave Rules of the Airports Authority of India and the decision of Respondent No. 1 to seek a refund of the encashment amount cannot be faulted. Accordingly the O.A., is dismissed. There will be no order as to costs.

R.K. Ahooja
(R.K. Ahooja)
Member (A)

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